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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In Re)
)
Amendment of Section 73.606(b))
of the Commission's Rules, the)
Table of Allotments for)
Television Broadcast Stations)
(Boise, Idaho))

RM-_____

To: Chief, Allocations Branch

PETITION FOR RULEMAKING

KM Communications, Inc. ("KM"), by its attorneys, and pursuant to Section 1.401 of the Commission's Rules, 47 C.F.R. § 1.401, hereby petitions the Commission to amend the Table of Allotments for Television Broadcast Stations to substitute Channel 21 for Channel 14 at Boise, Idaho, and to authorize KM to amend its pending application for Channel 14 at Boise (File No. BPCT-941215KF) to specify operation on Channel 21 without subjecting the application to a new cut-off. In support of this petition for rulemaking, KM submits the following:

Boise is the capital of Idaho and the largest city in the state, with an estimated 1991 population of 128,900. which is almost three times the population of Pocatello, the next largest community in the state.¹ Boise is located in Ada County, by far the most populous county in Idaho, and an area which has experienced growth on the order of 20% in population and trade in recent years. See Atlas at 305. Boise is the principal business and trading center

¹ See 1992 Commercial Atlas & Marketing Guide 305 (Rand McNally, 123rd Edition, 1992)("Atlas").

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for southwestern Idaho and eastern Oregon.

Boise currently has only three commercial television channel allotments, for Channels 2, 7 and 14. See 47 C.F.R. § 73.606(b). Of the three commercial frequencies, Channels 2 and 7 have licensed stations² and Channel 14 is vacant.

On December 15, 1994, KM filed its application (File No. BPCT-941215KF) for a construction permit for Channel 14. On February 2, 1995, the Commission released a Public Notice accepting KM's application for filing and setting a March 20, 1995 cut-off date. See Public Notice, Report No. A-188 at 2 (released February 2, 1995). On the cut-off date, a Petition to Deny was filed by certain land mobile radio licensees claiming that KM's proposed operation may cause objectionable interference to their existing operations, to which KM filed an Opposition and the petitioners a Reply.³ International Television Network, Inc. ("ITN") was the only party to file a competing, mutually-exclusive application before the cut-off date (File No. BPCT-950320KE).

On September 15, 1995, the Commission announced that it would waive, for a period of ninety days, the limit on settlement payments made to parties dismissing applications

² KBCI-TV, Channel 2, is a CBS affiliate, and KTVB(TV), Channel 7, is a NBC affiliate. See 1 Broadcasting & Cable Yearbook 1996 C-23 (R.R. Bowker, A Reed Reference Publishing Company 1996)("Yearbook"). Boise is also served by a noncommercial educational television station on Channel 4, KAID(TV). Id. Other commercial stations in the Nielson Designated Market Area ("DMA") for Boise include KIVI(TV), Nampa, Idaho, an ABC affiliate on Channel 6; KTRV(TV), Nampa, Idaho, a Fox affiliate on Channel 12; and KHDT-TV, Caldwell, Idaho, an independent station on Channel 9. Id. at C-162.

³ See Petition to Deny filed March 20, 1995 ("Petition"), by Idaho Communications, L.P. and Gem Communications, Inc. ("Petitioners"); Opposition to Petition to Deny filed April 4, 1995 ("Opposition") by KM; and Reply to Opposition to Petition to Deny filed April 28, 1995 ("Reply") by Petitioners.

as part of a universal settlement⁴ of a frozen comparative proceeding.⁵ On December 14, 1995, KM and ITN entered into a settlement agreement and filed a Joint Request for Approval of Universal Settlement (the "Joint Request"). Under the terms of the settlement, KM agreed to pay ITN \$200,000 upon approval of the settlement agreement, grant of the Joint Request, the dismissal of ITN's application and the grant of KM's application, and all of these actions becoming final actions. The Joint Request is currently pending before the Commission.

On or about March 13, 1996, the Commission requested more information from KM regarding KM's proposal, and specifically regarding KM's plans to prevent potential interference to existing land mobile radio licensees. KM filed a timely response on April 29, 1996, in the form of an amendment addressing the Commission's concerns.

In order to resolve the potential for interference to existing land mobile radio licensees and aural STLs and the resulting additional costs associated with resolving any actual interference that may occur,⁶ which is unique to the proposed operation on Channel 14, KM proposes that the Commission substitute Channel 21 for the Channel 14 allotment at Boise. The Engineering Report demonstrates that Channel 21 may be allotted to Boise in compliance with the minimum distance separation requirements of the Commission's Rules, as well as in

⁴ See Public Notice, FCC Waives Limitations on Payments to Dismissing Applicants in Universal Settlements of Cases Subject to Comparative Proceedings Freeze Policy, FCC 95-391 (released September 15, 1995).

⁵ The Commission imposed a freeze on comparative hearings, see FCC Freezes Comparative Proceedings, 9 FCC Rcd 1055 (1994), and Modification of FCC Comparative Proceedings Freeze Policy, 9 FCC Rcd 6689 (1994), in light of the holding in Bechtel v. F.C.C., 10 F.3d 875 (D.C. Cir. 1993).

⁶ See Engineering Report of Cohen, Dippell and Everist, P.C., dated July 1996, attached hereto ("Engineering Report").

compliance with the Commission's policies to protect future advanced television ("ATV") channel allotments. See Engineering Report at 1-2 and Table I. The Engineering Report also demonstrates that there is at least one additional channel, Channel 27, available for other parties that may express an interest in serving the Boise community at some future date, id. at 1-2 and Table II, and KM submits that other UHF channels likely are available. The proposed Channel 21 allotment is approximately 555 kilometers from Portland, Oregon, and therefore is not subject to the ATV freeze. Id. at 2.

Commission policy allows an additional channel to be added for a community if the only vacant channel is the subject of a comparative proceeding, and the new channel can be added consistent with other allotment policies, such as the minimum distance separation rules and the ATV freeze policy, and where additional channels are available for allotment in response to other expressions of interest. See Sioux Falls, South Dakota, 11 FCC Rcd 1069 (Allocations Branch 1996). In allotting an additional channel to Sioux Falls, the Commission noted that the public interest would be served by potentially providing a sixth local television service for the community, and by avoiding the need for a comparative hearing. Id. at ¶ 5. The Commission also has allowed petitioners to retain cut-off protection for their pending applications in similar circumstances, where no other timely-filed expressions of interest are filed or, if such expressions of interest are filed, there is at least one additional allotment which can be made to accommodate those parties Id.; see also, Copeland, Kansas, 5 FCC Rcd 7682 (1990); Roseburg, Oregon, 6 FCC Rcd 4369 (1991).

In KM's case, substitution of Channel 21 for Channel 14 would resolve the land mobile radio interference concerns raised by the Petition and the Commission, and therefore

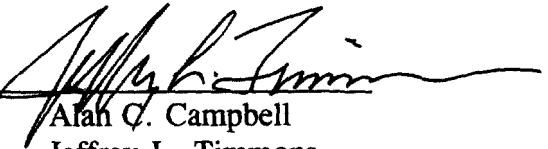
would facilitate the resolution of the comparative proceeding and remove an obstacle to the approval of the settlement agreement and the grant of the Joint Request, which otherwise may be delayed pending the Commission's resolution of the Petition. The purpose of the waiver of the limitation on settlement payments was to avoid the delay of hearings, conserve Commission resources, and speed the introduction of new service, all purposes which would be served by a grant of this petition. Channel 21 may be allotted to Boise and substituted for Channel 14 consistent with the Commission's minimum distance separation rules and the ATV freeze policy. The public interest would be served by potentially providing a third commercial local television service licensed to Boise, and by conserving the Commission resources that otherwise would be required to resolve the Petition and to conduct a comparative hearing.

The Engineering Report also demonstrates that at least one additional channel, Channel 27, is available for allotment to accommodate other expressions of interest in serving Boise, and submits that there likely is more than one such additional channel. Accordingly, KM requests that it be authorized to amend its pending application to specify Channel 21 while retaining its cut-off protection. Such action would allow the Commission to resolve the land mobile radio Petition, and process the settlement agreement and Joint Request, more promptly, thereby expediting the initiation of a new television service to Boise.

KM hereby states its present intention to amend its pending application to specify Channel 21 in the event the Commission grants this petition and substitutes Channel 21 for Channel 14, and to build a station promptly upon the grant of a construction permit authorizing the construction of a station.

Wherefore, the above premises being considered, KM requests that this Petition for Rulemaking be granted; that Section 73.606(b), the Table of Allotments for Television Broadcast Stations, be amended to substitute Channel 21 for Channel 14 at Boise, Idaho; and that KM be authorized to amend its pending application for Channel 14 at Boise, Idaho to specify operation on Channel 21 without subjecting the application to a new cut-off.

Respectfully submitted,
KM COMMUNICATIONS, INC.

By: 
Alan C. Campbell
Jeffrey L. Timmons

Its Attorneys

IRWIN, CAMPBELL & TANNENWALD, P.C.
1730 Rhode Island Avenue, N.W.
Suite 200
Washington, D.C. 20036-3101

(202) 728-0400

July 10, 1996

**ENGINEERING REPORT
TO AMEND SECTION 73.606 OF THE FCC RULES
BY SUBSTITUTING UHF-TV
CHANNEL 21 FOR CHANNEL 14 AT
BOISE, IDAHO**

JULY 1996

**COHEN, DIPPELL AND EVERIST, P.C.
CONSULTING ENGINEERS
RADIO AND TELEVISION
WASHINGTON, D.C.**

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington)
) ss
District of Columbia)

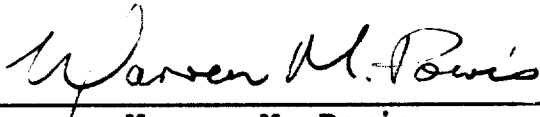
Warren M. Powis, being duly sworn upon his oath, deposes and states that:

He is a graduate electrical engineer of the University of Canterbury, New Zealand, a Registered Professional Engineer in the District of Columbia, the State of Virginia, the State of South Carolina and Vice President of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005; previously employed for 15 years with the New Zealand Broadcasting Corporation; a member of the Institution of Professional Engineers New Zealand (IPENZ), the Association of Federal Communications Consulting Engineers (AFCCE), and the National Society of Professional Engineers (NSPE).

That his qualifications are a matter of record in the Federal Communications Commission;

That the attached engineering report was prepared by him or under his supervision and direction and,

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts he believes them to be true.



Warren M. Powis
District of Columbia
Professional Engineer
Registration No. 8339

Subscribed and sworn to before me this 10th day of July, 1996.



Notary Public

My Commission Expires: 2/28/98

This engineering report has been prepared on behalf of KM Communications, Inc. ("KM"), applicant for UHF-TV, Channel 14 at Boise, Idaho (FCC File No. BPCT-941215KF). KM proposes to amend the TV Table of Allotments, Section 73.606 of the FCC Rules as follows.

Boise, Idaho

Substitute Channel 21 for Channel 14.

The reference coordinates for the proposed new allotment are:

NAD-27

North Latitude: 43° 36' 08"

West Longitude: 116° 13' 01"

The above coordinates are for Boise, Idaho. The proposed Deer Point transmitter site which is located 19.7 km north-northeast of Boise is also compliant with the FCC minimum distances separations required under Sections 73.610 and 73.698 of the FCC Rules.

The proposed Deer Point operation will provide City Grade (80 dBu) service to Boise, Idaho.

Allocation Situation

Table I shows the allocation situation for the proposed Channel 21 allotment. The proposed allotment meets the required distance separations to all United States allotments. Table II shows the allocation table for complementary Channel 27 which would be available for allotment if other parties express an interest in serving Boise,

Idaho. Accordingly, KM requests that it be permitted to modify its application to specify Channel 21 "without loss of cut-off protection".

The Channel 21 and 27 allotments meet the ATV freeze for TV applications in that it is located 555.6 km from the Portland, Oregon, reference point (NL 45°31'06", WL 122°40'35").

Reasons for Channel Substitution

A petition to deny KM's Channel 14 application was filed by Idaho Communications, L.P. and Gem Communications, Inc. and the radio licensees listed in its Exhibit A ("Petitioners").

The proposed channel substitution will enable KM to operate without impacting Public Safety and Commercial land-mobile station operations whose operating frequencies are located immediately adjacent to UHF-TV Channel 14. Furthermore, second harmonic effects of TV Channel 14 fall across the aural STL spectrum used by FM transmitting stations on Deer Point to receive their programming. Without a channel substitution, we estimate that KM would have to spend \$500,000 to \$1,000,000 to construct and operate on Channel 14 without causing interference to land-mobile and aural STL's.

Accordingly, the proposed Channel 21 substitution will enable KM to bring a new television service to the Boise area without inviting unnecessary incompatibility problems and the associated expenses involved in mitigating these problems.

COHEN, DIPPELL AND EVERIST, P. C.

TABLE I
UHF-TV ALLOCATION SITUATION
FOR THE PROPOSED SUBSTITUTION OF
CHANNEL 21 FOR CHANNEL 14 AT
BOISE, IDAHO
JULY 1996

<u>Channel</u>	<u>Adjacent Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Separation</u>	
					<u>Actual km</u>	<u>Required km</u>
21	0	Prop.	Boise, ID	N 43° 36' 08" W 116° 13' 01"	--	--
14	-7		None within 175 km		--	95.7
16	-5		None within 125 km		--	31.4
17	-4	Allot.	Weiser, ID	N 44° 14' 49" W 116° 58' 12"	93.8	31.4
18	-3		None within 125 km		--	31.4
19	-2		None within 125 km		--	31.4
20	-1		None within 175 km		--	87.7
21	0		None within 350 km		--	280.8
22	+1		None within 175 km		--	87.7
23	+2		None within 125 km		--	31.4
24	+3		None within 125 km		--	31.4
25	+4		None within 125 km		--	31.4
26	+5		None within 125 km		--	31.4
28	+7		None within 175 km		--	95.7
29	+8		None within 125 km		--	31.4
35	+14		None within 175 km		--	95.7
36	+15		None within 175 km		--	119.9

COHEN, DIPPELL AND EVERIST, P. C.

TABLE II
UHF-TV ALLOCATION SITUATION
FOR THE COMPLEMENTARY ALLOTMENT OF CHANNEL 27
WITH THE PROPOSED SUBSTITUTION OF
CHANNEL 21 FOR CHANNEL 14 AT
BOISE, IDAHO
JULY 1996

<u>Channel</u>	<u>Adjacent Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Separation</u>	
					<u>Actual km</u>	<u>Required km</u>
27	0	Prop.	Boise, ID	N 43° 36' 08" W 116° 13' 01"	--	--
19	-8		None within 125 km		--	31.4
20	-7		None within 175 km		--	95.7
22	-5		None within 125 km		--	31.4
23	-4		None within 125 km		--	31.4
24	-3		None within 125 km		--	31.4
25	-2		None within 125 km		--	31.4
26	-1		None within 175 km		--	87.7
27	0		None within 350 km		--	280.8
28	+1		None within 175 km		--	87.7
29	+2		None within 125 km		--	31.4
30	+3		None within 125 km		--	31.4
31	+4		None within 125 km		--	31.4
32	+5		None within 125 km		--	31.4
34	+7		None within 175 km		--	95.7
35	+8		None within 125 km		--	31.4
41	+14		None within 175 km		--	95.7
42	+15		None within 175 km		--	119.9

CERTIFICATE OF SERVICE

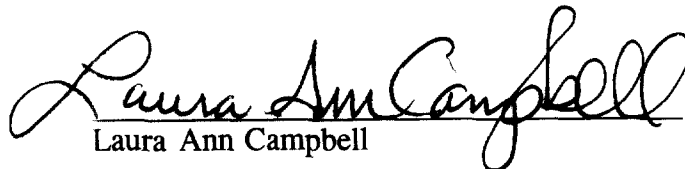
I, Laura Ann Campbell, hereby certify that on this 10th day of July, 1996, copies of the foregoing "Petition for Rulemaking" have been served by hand delivery or first class mail, postage prepaid, upon the following:

Clay Pendarvis, Chief*
Television Branch, Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 702
Washington, D.C. 20554

John A. Karousos, Chief*
Allocations Branch, Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 565
Washington, D.C. 20554

Richard Hildreth, Esquire
Fletcher, Heald & Hildreth, P.L.C.
Counsel to International Television Network, Inc.
1300 N. 17th Street, 11th Floor
Rosslyn, Virginia 22209

Raymond J. Kimball, Esq.
Jeffrey S. Neeley, Esq.
Counsel to Idaho Communications, L.P.
and Gem Communications, Inc.
Ross & Hardies
888 16th Street, N.W., 4th Floor
Washington, D.C. 20006


Laura Ann Campbell

* denotes hand delivery